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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,805	01/14/2004	Jacob Richter	92077.003(US9)	5411

7590 04/16/2009  
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EXAMINER
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BUI, VY Q

ART UNIT	PAPER NUMBER
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3773

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04/16/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/757,805	<b>Applicant(s)</b> RICHTER, JACOB	
	<b>Examiner</b> Vy Q. Bui	<b>Art Unit</b> 3773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) 52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,7,9,10,13,14,18,20,22,23,26,29,31-33,36-38,41,43,45,46,49-51,53-56,58,59,61 and 62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/8/2008</u> .  | 6) <input type="checkbox"/> Other: _____                          |

Continuation of Disposition of Claims: Claims pending in the application are 1,5,7,9,10,13,14,18,20,22,23,26,29,31-33,36-38,41,43,45,46,49-51,52-56,58,59,61 and 62.

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

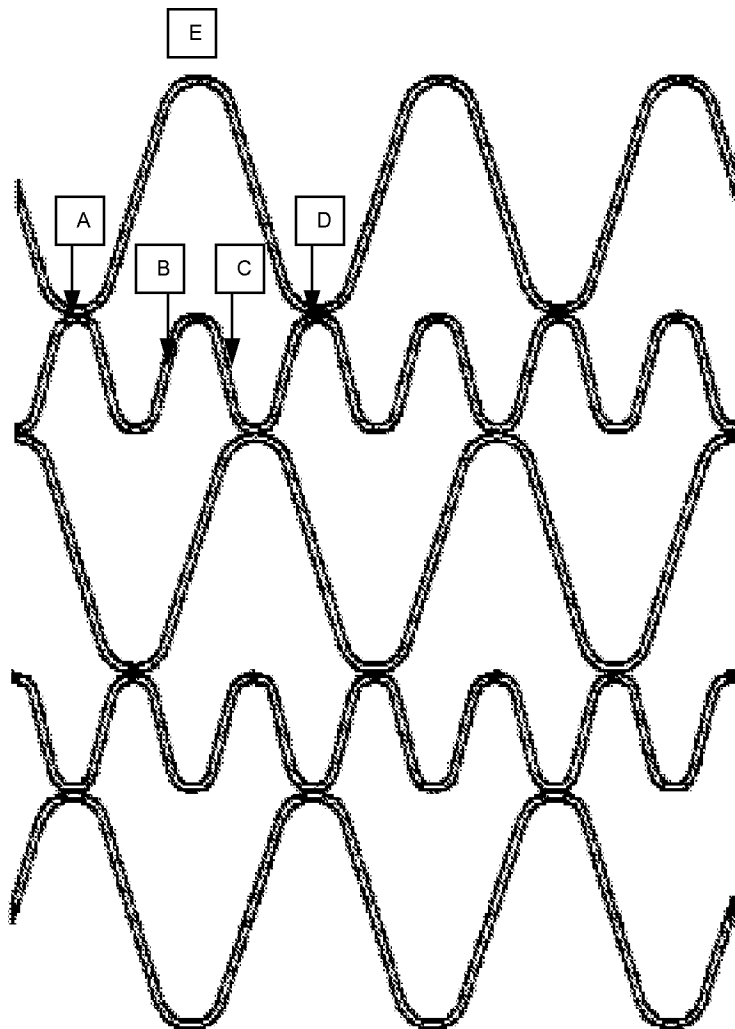
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1, 5, 9-10, 13, 18, 22-23, 26, 29, 32-33, 36-37, 41, 45-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Jayaraman-6,162,245.

As to claims 1, 5, 9-10, 13, 18, 22-23, 26, 29, 32-33, 36-37, 41 and 45-46, Jayaraman-245 discloses substantially the claimed invention including cells consisting of 1 loop AED and three loops AB, BC, CD, wherein strut AED is wider than struts AB, BC, CD and strut BC is shorter than struts AB and CD as shown in the reproduced Fig. 30 of Jayaraman-245 below:

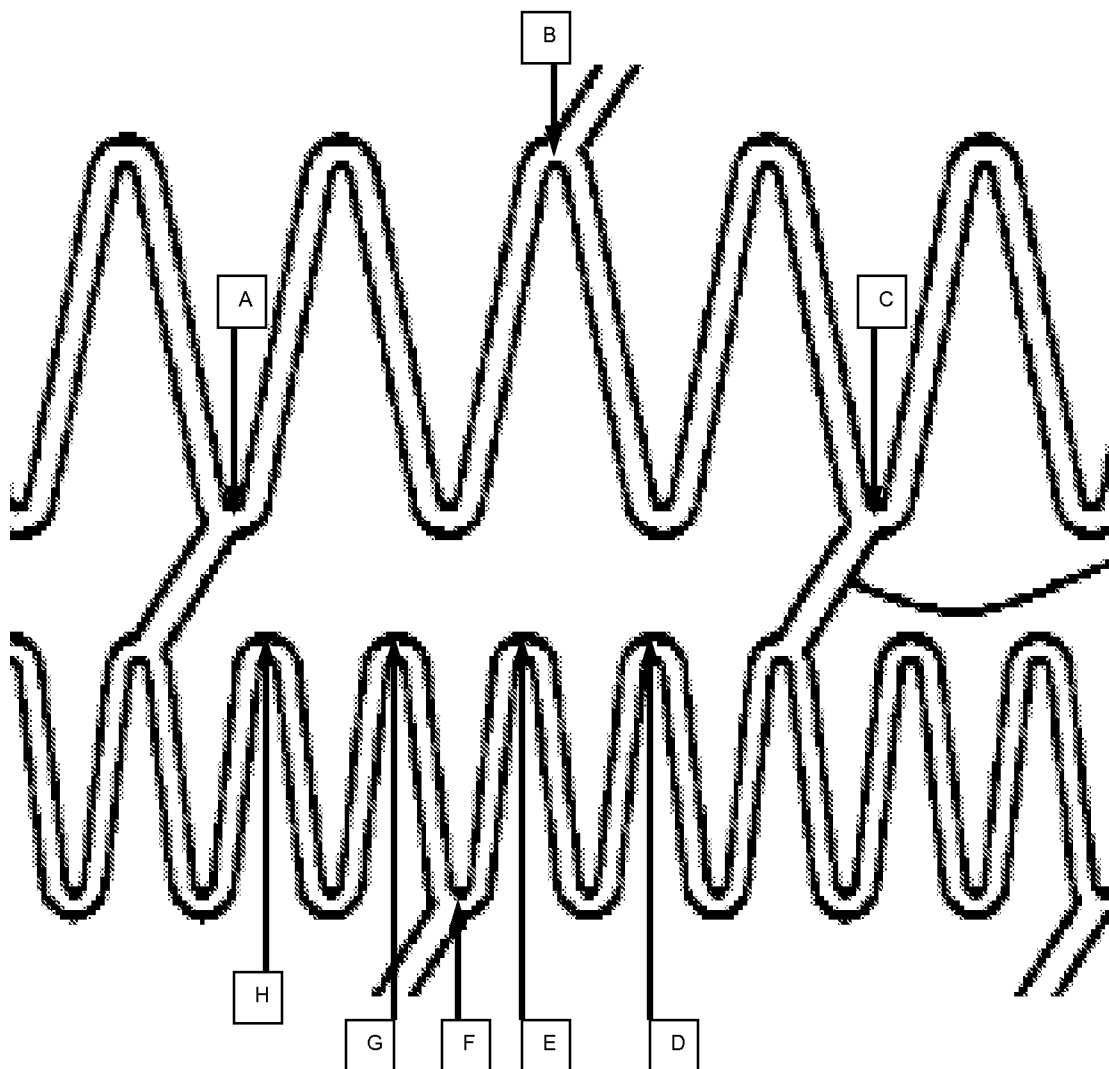


*Fig. 30*

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2. Claims 49, 53-56, 61-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al-7,204,848.

As to claims 49, 55-56, 58, Brown-'848 discloses substantially the claimed invention including cells including 1<sup>st</sup> member AB, 2<sup>nd</sup> member BC, 3<sup>rd</sup> member CD, 4<sup>th</sup> member DE, 5<sup>th</sup> member EF, 6<sup>th</sup> member FG, 7<sup>th</sup> member GH and 8<sup>th</sup> member HA, substantially as recited in the claims as shown in the reproduced Fig. 30 of Jayaraman-'245 below:



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As to claims 53 and 54, notice that in a collapsed configuration all members of each cell of the stent are substantially parallel.

As to claims 61-62, 1<sup>st</sup> and 2<sup>nd</sup> members AB and BC are wider than struts 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> members and 5<sup>th</sup> member EF is shorter than 3<sup>rd</sup> member CD.

3. Claims 7, 14, 20, 31, 38, 43 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jayaraman-6,162,245.

As to claims 7, 20, 31, 43, Jayaraman-6,162,245 discloses substantially the claimed invention, except for explicitly discloses that the crimped stent has in uniformly same diameter. It is clear that, as one desires, Jayaraman-6,162,245 stent is capable of being crimped to a uniformly same diameter as recited in the claims. Alternatively, it would have been obvious to one of ordinary skill in the art to provide a crimped stent having uniformly same diameter or nesting of struts for a generally lower profile of the stent for easy deployment of the stent in a tortuous vessel.

As claims 14 and 38, in a crimped configuration, all loops and bands of the stent are substantially in phase one to another.

4. Claim 59 is rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brown et al-7,204,848.

As to claim 59, Brown et al-7,204,848 discloses substantially the claimed invention, except for explicitly discloses that the crimped stent has in uniformly same diameter. It is clear that, as one desires, Brown et al-7,204,848 stent is capable of being crimped to a uniformly same diameter as recited in the claims. Alternatively, it would have been obvious to one of ordinary skill in the art to provide a crimped stent having uniformly same diameter or nesting of

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struts for a generally lower profile of the stent for easy deployment of the stent in a tortuous vessel.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 50-51 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al-7,204,848.

As to claims 50-51, Brown et al-7,204,848 discloses substantially the claimed invention, except for the differences in length of the members as recited in the claims. However, It would have been an obvious matter of design choice to , since such a modification would have involved a mere change in the size of a component. A change in size or length is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after



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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vy Q. Bui/  
Primary Examiner, Art Unit 3773